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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,401	03/22/2001	Mark D. Einziger	1932/OH835	3826

7590

06/16/2005

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EXAMINER

BERKO, RETFORD O

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/814,401	EINZIGER ET AL.	
	Examiner	Art Unit	
	Retford Berko	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-16 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-16 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Acknowledgement: The Amendment filed 3/16/05 is acknowledged.

Status of Claims

Applicant cancelled claims 1-2, and 17-22. Claims 3-16 and 23-25 remain for examination.

Withdrawal of Claim Rejections:

The claim rejections under 35 USC Sec 103 in the previous office action are hereby withdrawn.

Applicant's arguments with respect to claim 3-16 and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 is dependent on a cancelled claim.

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There is insufficient antecedent basis for this limitation in the claim because claim 1 was cancelled.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Claims 3-16 and 23-25 are rejected under 35 U.S.C. under 35 U.S.C. 103(a) as being unpatentable over Vanzo et al (US 5, 075, 432) in view of Coulter et al (US 3, 743, 613) further in view of Masters et al (US 5, 855, 871).

Vanzo discloses slurry cyclodextrin (col 1, lin 13, col 3, lin 21, col 3, lin 40-56 and co 4, lin 26), said slurry comprising sodium bicarbonate (col 2, lin 65-68, col 7, lin 8-11 and col 8, lin 35-36).

Patent '432 does not teach the particle size of the bicarbonate particles, does teach that the bicarbonate particles are spherical; neither does it teach bulk density or zeta potential of the slurry.

Coulter et al (Patent '613) discloses a slurry composition (col 2, lin 40-45, col 7, lin 5-10, col 13, lin 34 and claim 9 at col 14) comprising sodium bicarbonate or other alkali metal bicarbonate as buffering agent (col 6, lin 30-35, claim 6 at col 13 and claims 14 and 15 at col 14). According to Coulter et al the bicarbonate or the buffering agent slows down rate of degradation of the slurry material (col 6, lin 69).

Masters et al (Patent '871) disclose dentrifice composition, said composition in the form of slurry (col 10, lin 35-40) comprising alkali metal e.g. sodium bicarbonate (col 3, lin 20-25, col 10 table VI, lin 65-67, continuing to col 11, lin 10-15). According to Masters, surface active

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agents are incorporated into the composition as ingredients to aid in the thorough dispersion of the dentrifice throughout the oral cavity, improving cosmetic acceptability and foaming properties.

One of ordinary skill may have been motivated to prepare compositions in the form of a slurry, e.g. dentrifice; comprising sodium bicarbonate as in the prior art. By including alkali metal bicarbonate as base in the slurry, one of ordinary skill would expect to obtain stable slurry composition (i.e. slower rate of degradation) as in the disclosure by Coulter (col 6, lin 69) and having improved cosmetic acceptability as shown by Masters where a dentrifice composition having improved cosmetic acceptability was achieved through the use of alkali metal bicarbonates as ingredients in the composition (Patent '871, col 3, lin 20-25 and col 4, lin 40-45). Therefore, the invention as whole would have been prima facie obvious at the time it was made.

The following prior art is considered as pertinent to applicant's invention and is therefore cited for the record but is not relied upon for the present Sec 103 rejection:

Waggener et al (US 3, 780, 160). The reference discloses a slurry of sodium bicarbonate or other alkali metal bicarbonate (col 2, lin 25, col 3, lin 10 and lin 29). The reference discloses physical parameters of the slurry--e.g. crystals having controlled size and density (col 3, lin 35; col 5, lin 10-24; col 6, lin 16-26); particle size (col 4, lin 70-75) and flow properties (col 6, lin 20-25).

The reference is cited to show that the physical properties claimed by applicant (particle size, bulk density and zeta potential) are generally known as inherent of slurries comprising alkali metal bicarbonates. The reference is not currently used as no specific dentrifice composition is cited in the reference.

Correspondence

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Retford Berko** whose telephone number is 703-305-4442. The examiner can normally be reached on M-F from 8.00 am to 5.30 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K Page**, can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY
PRIMARY EXAMINER